

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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ALAN FORRESTER,) 2:10-CV-00453-PMP-PAL
Appellant/Defendant,) 2:09-mj-00341-LRL
vs.) **OPINION**
UNITED STATES OF AMERICA,)
Appellee/Plaintiff.)

On January 6, 2010, Appellant/Defendant Alan Forrester commenced trial before the Honorable Lawrence R. Leavitt, United States Magistrate Judge, on charges set forth in a four count Complaint charging him with Operating a Motor Vehicle Under the Influence of Alcohol (Count One); Operating a Motor Vehicle Under the Influence of a Blood Alcohol Content of 0.08 Grams or higher (Count Two); Speeding (Count Three), and an Open Container (Count Four). Following a four day trial, on January 22, 2010, Forrester was convicted of the charges set forth in Counts Two, Three and Four of the Complaint. On March 30, 2010, Forrester was sentenced to a term of two years supervised probation.

On April 1, 2010, Forrester filed a timely appeal of the Judgment rendered by Magistrate Judge Leavitt. Forrester's appeal is fully briefed, and ripe for decision. Forrester does not appeal his convictions for Speeding (Count Three) or Open Container (Count Four). However, Forrester appeals his conviction for Operating a Motor Vehicle with a BAC of 0.08 Grams or higher (Count Two). The Court finds

1 the arguments asserted in support of Forrester's Appeal are without merit.

2 This Court reviews a claim of insufficient evidence *de novo*. United States v.
3 Stanton, 501 F.3d 1093, 1099 (9th Cir. 2007). "The evidence is sufficient to support
4 a conviction if, viewing the evidence in the light most favorable to the prosecution,
5 *any* rational trier of fact could have found the essential elements of the crime beyond
6 a reasonable doubt." United States v. Mincoff, 574 F.3d 1186 (9th Cir. 2009).

7 The Court has conducted a *de novo* of the trial proceedings before Magistrate
8 Judge Leavitt. (Doc.'s #20, 21, 23, and 24). The Court finds that the evidence
9 adduced was sufficient to support the verdict that Forrester's BAC was greater than
10 0.08 Grams. Therefore the record supports Magistrate Judge Leavitt's findings of
11 Forrester's guilt as to Count Two.

12 The Court further finds that the record does not support Forrester's argument
13 that Magistrate Judge Leavitt abused his discretion in admitting into evidence the
14 results of breath samples obtained from Forrester. Finally, this Court rejects
15 Forrester's argument that 36 CFR § 4.23(a)(2) requires a conversion from the results
16 of breath alcohol test results to blood alcohol content.

17 **IT IS THEREFORE ORDERED** that the Judgment of the Magistrate Judge
18 is **AFFIRMED**.

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20 DATED: October 21, 2010.

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23 PHILIP M. PRO
United States District Judge
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